

Medicinal Marijuana

R. Blake Hamilton

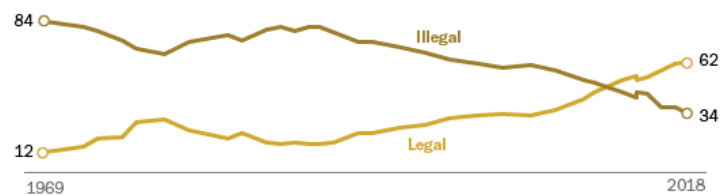
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U.S. public opinion on legalizing marijuana, 1969-2018

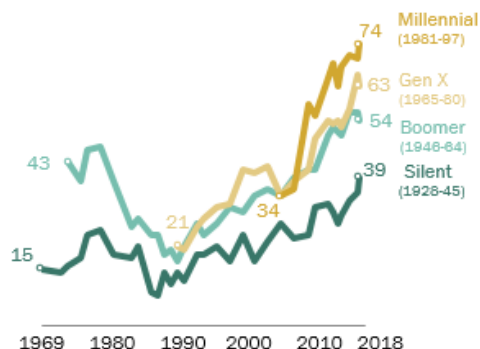
Do you think the use of marijuana should be made legal, or not? (%)



Source: Survey of U.S. adults conducted Sept. 18-24, 2018.

Pew Research Center

Support for Legalizing Marijuana by Generation



Note: Don't know responses not shown.

Source: Survey of U.S. adults conducted Sept. 18-24, 2018.

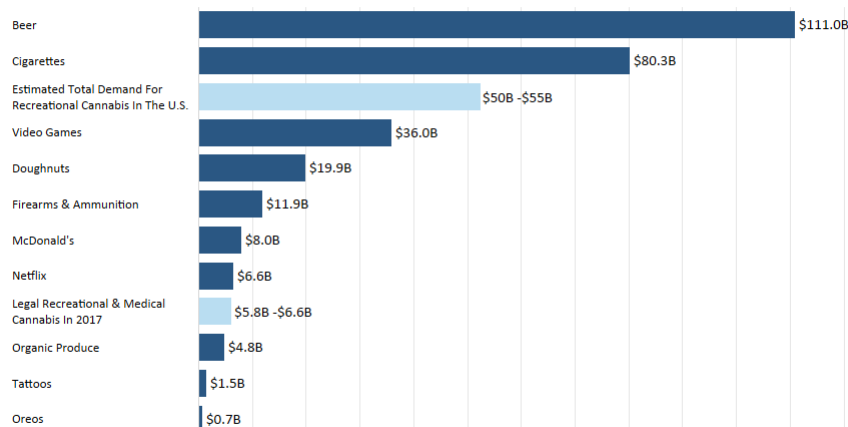
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Annual U.S. Cannabis Sales

Annual U.S. Cannabis Sales Vs. Other Industries & Goods



Source: Brewers Association, Alcohol & Tobacco Tax & Trade Bureau, Entertainment Software Association, Goldstein Research, IBIS World, Netflix, Nielsen, Nabisco
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Federal Landscape

▪ Cole Memo (2013)

- Drafted by U.S. Attorney General James M. Cole
- Addressed to U.S. attorneys in all states
- DOJ would take hands off enforcement approach to cannabis unless violating certain key principles
- Rescinded on January 4, 2018, giving discretion to individual U.S. attorneys to enforce as they see fit
- Rescission of Cole memo has not led to significant increase in enforcement
- No actions brought against ancillary players (e.g. attorneys, accountants, vendors, etc.)

Federal Landscape

▪ Rohrabacher–Blumenauer Amendment (2014)

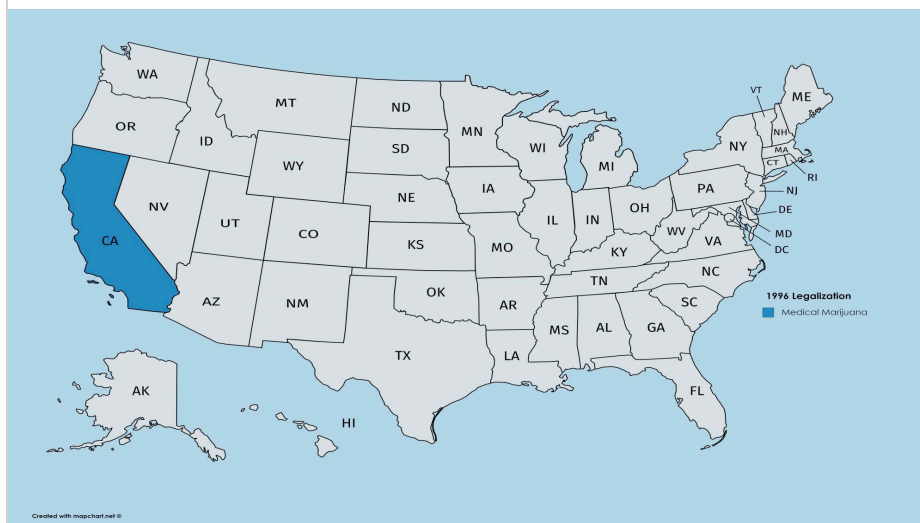
- Became law in December 2014
- Prohibits the Justice Department from spending funds to interfere with the implementation of state medical cannabis law
- DOJ initially interpreted the amendment to only apply to state officials and not private individuals or entities
- Eventually, U.S. District Judge Charles Breyer rejected DOJ's interpretation and it has subsequently been rejected by the Ninth Circuit and other courts

Federal Landscape

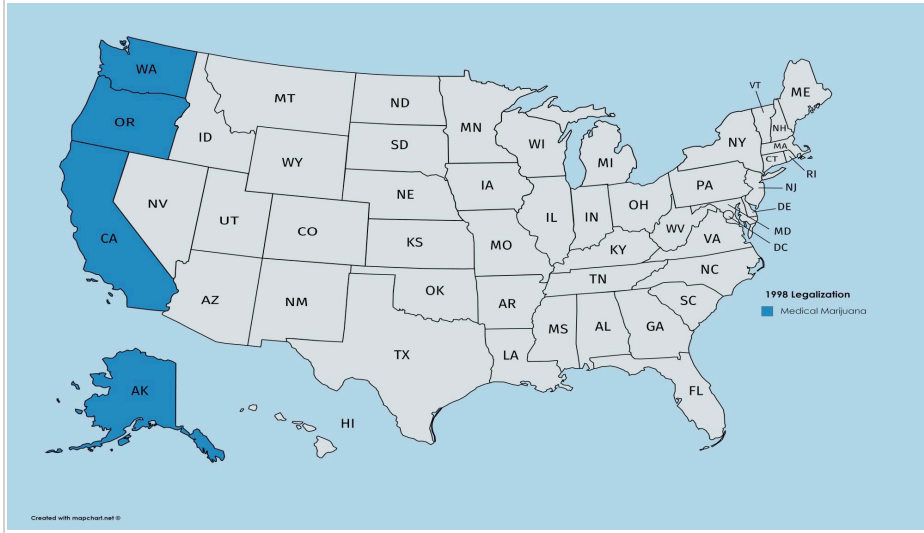
■ STATES Act

- Strengthening the Tenth Amendment Through Entrusting States (STATES) Act is a bipartisan bill first introduced by Senators Elizabeth Warren and Cory Gardner last year
- The bill was intended to replace and expand on the Cole Memo, and to offer cannabis protections in law rather than the Cole Memo's nonbinding policy
- As drafted, the Controlled Substances Act would no longer apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration or delivery of marijuana
- Already seems to have more bipartisan support this year, but its future remains unclear

State Legislation



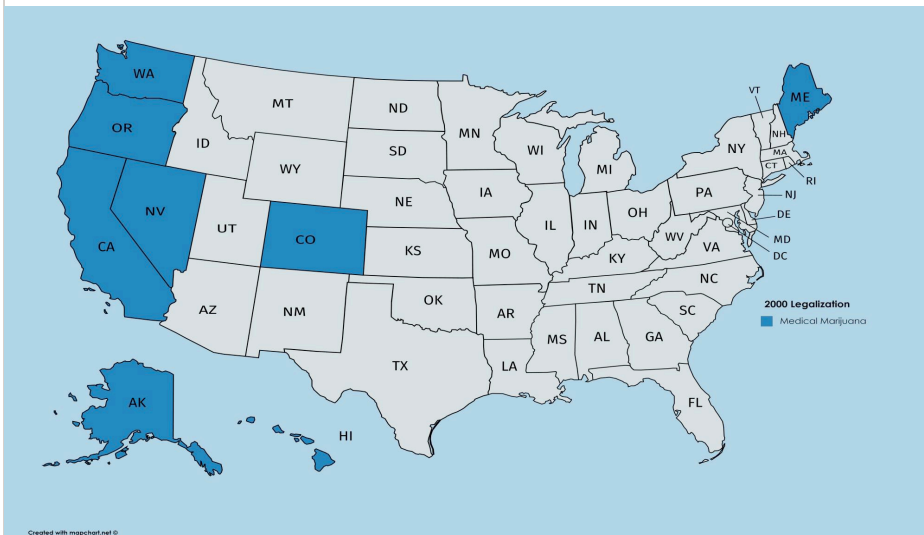
State Legislation



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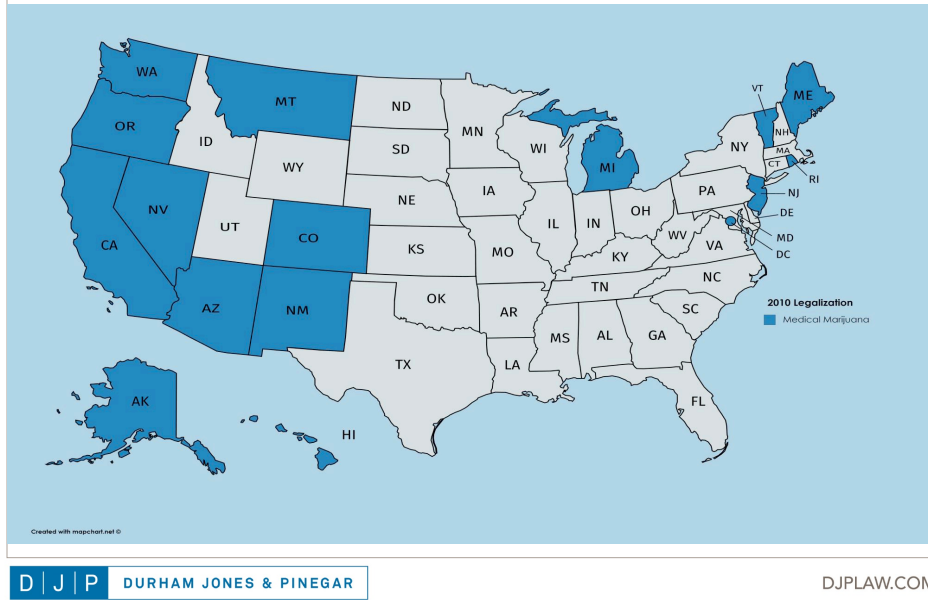
State Legislation



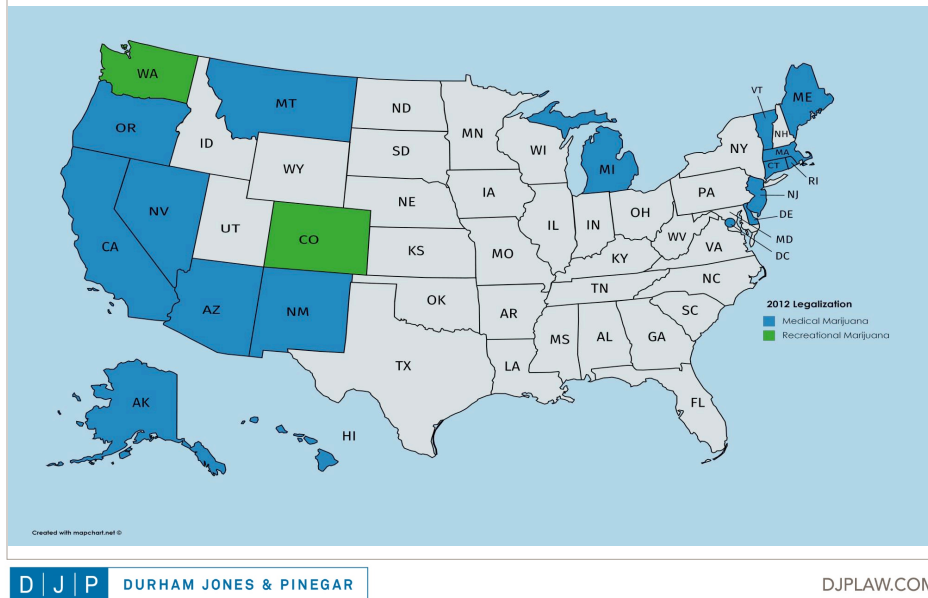
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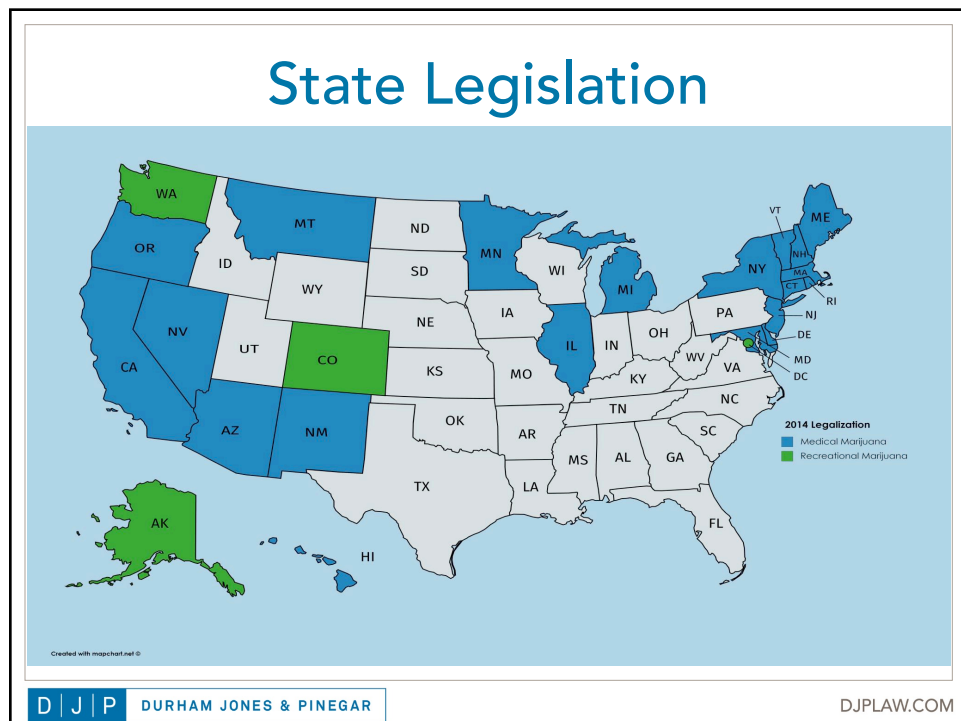
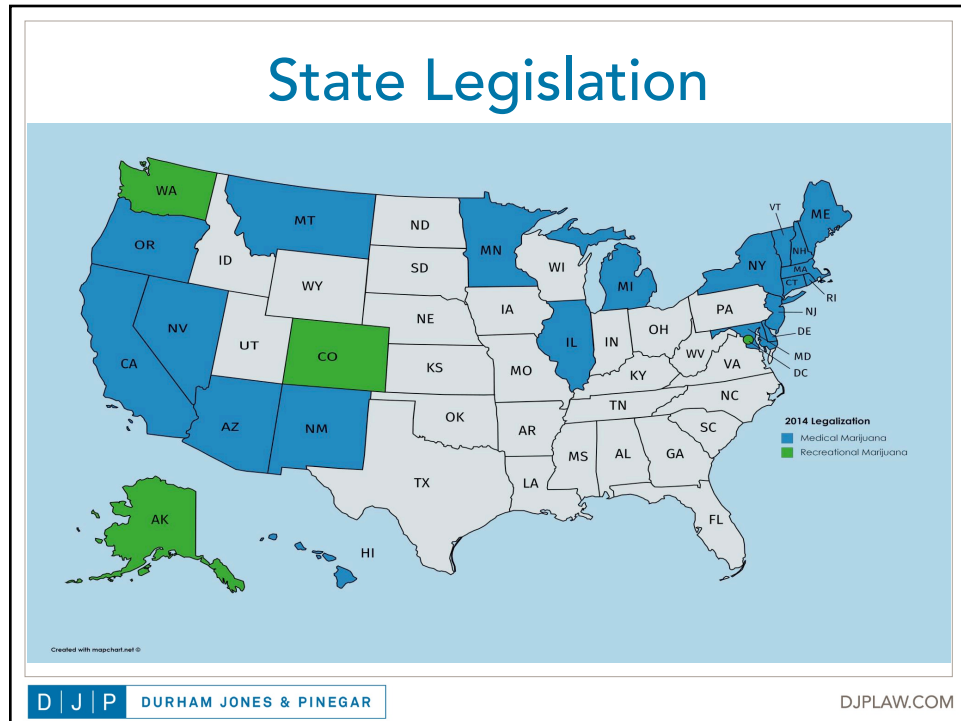
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State Legislation



State Legislation





State Legislation

2014 Legislation

- Medical Marijuana (Blue)
- Recreational Marijuana (Green)

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State Legislation

2018 Legalization

- Medical Marijuana
- Recreational
- CBD Limited Legislation
- Only Hemp Production Allowed

2018 Legislation by State:

- Medical Marijuana (Blue):** MT, ND, MN, WI, IA, IL, IN, OH, PA, NY, VT, NH, ME, RI, CT, DE, NJ, WV, VA, NC, SC, GA, FL, LA, AR, MO, KY, TN, MS, AL, HI, AK, NV, UT, AZ, NM, OK, TX, CO, KS, NE, SD, WY, ID, WA, OR, CA, AK, HI.
- Recreational (Green):** WA, OR, NV, CA, AK, HI.
- CBD Limited Legislation (Yellow):** WY, IA, IL, IN, OH, PA, NY, VT, NH, ME, RI, CT, DE, NJ, WV, VA, NC, SC, GA, FL, LA, AR, MO, KY, TN, MS, AL, HI, AK, NV, UT, AZ, NM, OK, TX, CO, KS, NE, SD, WY, ID, WA, OR, CA, AK, HI.
- Only Hemp Production Allowed (Orange):** NE.

Territories:

- Puerto Rico
- Guam
- Northern Mariana Islands
- American Samoa
- United States Virgin Islands

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Utah Medical Cannabis Act

- HB3001 was passed by lawmakers on December 3, 2018
- Replaced Ballot Proposition 2, approved by voters in November 2018

Program Deadline

- Most elements of the program must be operational by March 1, 2020
- Prior to Jan. 2021, not guilty for use or possession of medical cannabis if:
 - Diagnosed with a qualifying condition and had a pre-existing provider-patient relationship with a Utah-licensed medical provider; and
 - Cannabis is in medical dosage form and quantity
- Protection from liability under federal law or laws of other states is not guaranteed

Qualifying Conditions

- § 26-61a-104
 - HIV or AIDS
 - Alzheimer's
 - Amyotrophic lateral sclerosis
 - Cancer
 - Cachexia
 - Persistent nausea
 - Crohn's disease or ulcerative colitis
 - Epilepsy
 - Multiple sclerosis
 - PTSD
 - Autism
 - Terminal illness with life expectancy of less than 6 months
 - Rare conditions
 - Pain lasting longer than 2 weeks that is not adequately managed with other treatments

Qualified Medical Providers

- § 26-61a-106
 - Qualified Medical Provider (QMP): a medical professional who can recommend a patient for treatment with medical cannabis. Can be a Utah licensed physician, osteopathic physician, advanced practice registered nurse (APRN), or physician assistant
 - Must be licensed to prescribe a controlled substance
 - Must complete 4 hours of continuing education prior to registration and 4 hours every 2 years to renew
 - Limited to 175 medical cannabis patients at a time, or 300 if a certified specialist in certain areas
 - Must document a patient's record with a thorough assessment of the patient's condition and medical history before recommending medical cannabis

Dosage Forms

- Tablet
- Capsule
- Concentrated Oil
- Liquid Suspension
- Topical Preparation
- Transdermal Preparation
- Gelatinous Cube
- Unprocessed cannabis flower in blister pack of 1 gram or less
- Wax or resin if two of the above are not effective

- SMOKING of cannabis is not permitted but vapor devices are
- EDIBLES such as candies, cookies, brownies, and unprocessed flowers outside of blister packs are not permitted

Cannabis Cards

- §§ 26-61a-201 to -205
 - Utah resident patients can apply for medical cannabis cards with their QMP
 - The Utah Department of Health (UDOH) evaluates the applications and issues the cards within 15 days
 - Patients under 21 must be approved by the Compassionate Use Board
 - Cards include Patient Card, Caregiver Card, Provisional (under 18) Patient Card, Guardian Card

Purchase Restrictions

- Living within 100 miles of cannabis pharmacy:
 - In one 12-day period, may purchase no more than:
 - Doses to last 14 days;
 - 56 grams of unprocessed cannabis; or
 - 10 grams of total composite THC
- Living over 100 miles of cannabis pharmacy:
 - In one 28-day period, may purchase no more than:
 - Doses to last 30 days;
 - 113 grams of unprocessed cannabis; or
 - 20 grams of total composite THC

Possession Restrictions

- Medical cannabis cardholders may not possess more than:
 - 113 grams by weight of unprocessed cannabis;
 - An amount of cannabis product that contains 20 grams of total composite THC
- Medical cannabis cardholders may not possess marijuana drug paraphernalia

Cannabis Pharmacies

- §§ 26-61a-301 and -501
 - Only seven pharmacy licenses available
 - Must have a licensed pharmacist registered as a pharmacy medical provider with UDOH
 - Can sell cannabis products only in medicinal dosage form, medical cannabis devices, or educational materials
 - Only cardholders over 18 years old may enter
 - Cannabis use on property forbidden
 - Employees registered as medical cannabis pharmacy agents and pass criminal background checks
 - No advertising but may include signage (green cross, name, hours)
 - Secure entrance, security system
 - Follow product labeling requirements
 - Cannot be within 600 feet of a residential or community zoned location
 - Inventory Control System to track cannabis from 8" plant to sale

State Central Fill Pharmacy

- § 26-61a-601
 - Must be operational by July 1, 2020
 - Closed door pharmacy that ships patient orders to one of 13 local health department locations for customer pickup
 - Meets all medical cannabis pharmacy requirements
 - Orders placed through QMP, electronic verification system, or phone
 - Electronic payments
 - Written counseling information included in each shipment, and contact information for a pharmacy medical provider for counseling

Personnel Implications

- Know the law
- Don't discriminate
- Comply with HIPAA
- Adopt clear policies

State and Local Govt. Employees

- § 26-61a-111
 - "the state or any political subdivision shall treat an employee's use of medical cannabis the same way [they] treat employee use of opioids or opiates" UNLESS
 - Doing so would "jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position."

State and Local Govt. Employees

- § 26-61a-111
 - Before assigning duties to an employee relating to medical cannabis, a state or political subdivision employer must give an employee or applicant written notice:
 - That the job duties may require the employee to engage in conduct which is in violation of the criminal laws of the United States; and
 - That by accepting the job, the employee may not object or refuse to carry out the assignment that may be in violation of the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis

Know the Law

- Only legal use of cannabis is protected under the law
- Still illegal in Utah:
 - Smoking and edibles
 - Cardholders possessing higher quantity than what is allowed
 - Cardholders possessing cannabis in a form other than medical form
 - Cardholders selling/sharing with others
 - Driving under the influence

Policies

- Consider amending your policies to specifically address:
 - The requirements of the Act
 - Drug testing
 - Particular positions of concern (i.e. federal funding, heavy equipment, dangerous weapons, etc.)
 - Working while impaired

Drug Testing

- Still permissible
- Speak with your lab about what you are testing for and when
 - Consider distinctions between types of THC
 - Consider whether random testing or some other frequency is appropriate

Discrimination

- Continue following your anti-discrimination practices already in place:
 - Treat cannabis cardholders the same as you would an employee using prescription opioids
 - Avoid asking questions about their cardholder status unless directly relevant to their job duties
 - Illegal drug use is excluded from ADA claims, as defined by federal law, so marijuana use is not protected under ADA. *James v. City of Costa Mesa*, 700 F.3d 394 (2012)
 - But, comply with the ADA as it relates to other disabilities a cannabis cardholder may have

When in Doubt

- Consult legal counsel
- Seek resources from the State of Utah
 - [Health.Utah.gov/medical-cannabis](https://health.utah.gov/medical-cannabis)
 - medicalcannabis@utah.gov

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